

## REMARKS

This Response is submitted in reply to the Final Office Action dated April 6, 2011, and in accordance with the telephone interview conducted with the Examiner on June 8, 2011 ("the Interview"). Claims 11, 27, and 28 stand canceled. Claims 5 to 8 are presently canceled without prejudice or disclaimer. Claims 1, 3, 4, 9, 10, 12 to 26, 29, and 30 have been amended for clarity. New Claims 31 to 38 have been added. No new matter is added by these amendments or these new claims. A Request for Continued Examination is submitted herewith. Please charge deposit account number 02-1818 to cover the cost of the Request for Continued Examination and any other fees due in connection with this Response.

As noted above, Applicant has filed a Request for Continued Examination with this Response. Applicant requests that the Examiner allow the application or provide an upcoming Office Action that "identif[ies] any claims which he or she judges, as presently recited, to be allowable and/or . . . suggest[s] any way in which he or she considers that rejected claims may be amended to make them allowable" in accordance with § 707.07(d) of the MPEP.

The Office Action rejected:

- (1) Claims 1 to 4, 6, 8 to 10, and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Admon*, U.S. Patent Appl. Pub. No. 2006/0287924 ("*Admon*"), in view of *Mendiola*, et al., U.S. Patent Appl. Pub. No. 2004/0058694 ("*Mendiola*");
- (2) Claims 5 and 7 under 35 U.S.C. § 103(a) as being unpatentable over *Admon* in view of *Mendiola* and *Herzog*, et al., U.S. Patent Appl. Pub. No. 2004/0059663 ("*Herzog*");
- (3) Claims 12, 13, 15, 16, 18 to 26, and 30 under 35 U.S.C. § 103(a) as being unpatentable over *Admon* in view of *Mendiola* and further in view of M2 Presswire "Link77: Link77 introduces reverse charge SMS billing service for ringtones and logos" ("*Link77*");
- (4) Claim 14 under 35 U.S.C. § 103(a) as being unpatentable over *Admon* in view of *Mendiola* and *Link77* and further in view of *Abeshouse*, et al., EP

Appl. No. EP1220126A2 ("*Abeshouse*"); and

- (5) Claim 17 under 35 U.S.C. § 103(a) as being unpatentable over *Admon* in view of *Mendiola* and *Link77* and further in view of Hong Kong's Tender, published June 2000 ("*Hong Kong's Tender*").

**1. The rejection of Claims 1 to 4, 6, 8 to 10, and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Admon* in view of *Mendiola*.**

As discussed during the Interview, *Admon* generally discloses a method of conducting an auction comprising "publicizing an auction to sell at least one item, accepting a preset number of price bids for the items, applying at least one cancellation rule to selectively cancel zero or more bids, [and] selecting one or more bids closest to a preselected low sum to receive the item." *Admon*, Abstract. Paragraph [0022] of *Admon* discloses one embodiment in which the bidders submit a method of payment with their bids "to ensure receipt of payment of a participation fee before determining the bid winners." Paragraphs [0058] and [0059] of *Admon* indicate various ways the participation fee may be used. For example, the participation fee may be given to the seller as profit. As explained by Applicant's representative during the Interview, *Admon* is silent as to whether its participation fee is: (1) a fee that a bidder places once to be able to participate in an auction, or (2) a fee that the bidder must place every time the bidder places a bid during the auction.

*Admon* does not disclose or suggest sending one of a plurality of bid acceptance messages to a bidder based on a status of the bidder's bid. Page 4 of the Office Action acknowledged this fact:

*Admon* does not disclose for each acceptable bid, sending a bid acceptance messages message [sic] to each of said bidders notifying the bidder of the status of the bidder's bid by SMS.

The Office Action relied on *Mendiola* to remedy these deficiencies of *Admon*.

As discussed during the Interview, *Mendiola*, in pertinent part, generally discloses "a trade and auction service." *Mendiola*, ¶ [0136]. *Mendiola*'s auction is a "standard" auction in which the highest bid at the end of a certain auction time period is the winner. Prior to placing a bid on an item being auctioned, a user of *Mendiola*'s

service must first register for the service via an internet web page. *Mendiola*, ¶¶ [0141]–[0156]. Once registered, if the user wants to bid on an item the user must place an initial bid on the item using a web page on the internet. *Mendiola*, ¶ [0177]. Paragraph [0179] discloses that “[o]nce the user has registered their first bid for a product, notification concerning the user’s bid and further bids can be sent to and received from the user’s GSM mobile phone without the need for the user to have access to his computer.” Paragraph [0180] of *Mendiola* discloses that when the user’s initial bid has been beaten by another bidder, *Mendiola*’s service sends an SMS message to the user’s mobile phone indicating that fact.

The user may then reply to the SMS message with an SMS message indicating a second bid. Paragraph [0188] discloses that in response to the second bid, *Mendiola*’s service sends an SMS message to the user indicating whether the second bid was accepted (i.e., whether the second bid is now the highest bid) or was not accepted (i.e., whether a higher bid than the second bid has already been received from another user). In other words, *Mendiola*’s service may send one of two bid acceptance messages to the user for each subsequent bid placed via SMS message, but not for the initial bid placed via the web page. At the end of the auction, the highest bidder wins the right to purchase the product for the highest bid amount. *Mendiola* does not disclose charging users any fees for placing bids.

In sum, *Mendiola* discloses, for each bid, if the bid is beaten by a higher bid, sending a message to the bidder indicating that fact (*Mendiola*’s alleged “status change message”). *Mendiola* also discloses, for each bid placed after a player’s initial bid, sending a message to the bidder indicating whether the bid was accepted or not accepted (*Mendiola*’s alleged “bid acceptance message”).

For at least the following reasons, Applicant respectfully submits that neither *Admon* nor *Mendiola*, alone or in combination, teaches or renders obvious each and every element of amended independent Claim 1.

First, neither *Admon* nor *Mendiola*, alone or in combination, teaches or renders obvious the following elements of amended independent Claim 1: for each acceptable bid received from one of the bidders: (i) determine whether said bid is unique; (ii) if the

at least one data processing device determines that said bid is not unique: (A) cause a first bid acceptance message to be sent by SMS to a communication device of said bidder, said first bid acceptance message including a notification that said bid is not unique; and (B) charge said bidder for sending said first bid acceptance message.

As noted above, the Office Action acknowledged that *Admon* does not disclose or suggest sending any bid acceptance messages. Further, *Admon*'s system does not determine whether a bid is unique until the auction is complete. Additionally, it is unclear whether *Admon* requires payment of the participation fee once or for each bid. *Mendiola* does not remedy these deficiencies of *Admon*. First, *Mendiola*'s auction system does not determine whether a bid is unique. Rather, *Mendiola*'s auction system determines whether a bid is higher than the current highest bid at the time the bid is received; the fact that a bid is unique is irrelevant to *Mendiola*'s auction. Second, and necessarily, *Mendiola* does not, if a bid is not unique, send a bid acceptance message including a notification indicating that the bid is not unique. Rather, *Mendiola*'s bid acceptance messages simply include a notification indicating whether a bid was accepted. Third, *Mendiola* does not send one of a plurality of bid acceptance messages for each acceptable bid. Rather, as explained in detail above, *Mendiola* only sends bid acceptance messages in association with bids placed after an initial bid (i.e., *Mendiola* does not send a bid acceptance message with respect to a bidder's initial bid). Finally, *Mendiola*'s auction system does not charge bidders for each placed bid.

Second, neither *Admon* nor *Mendiola*, alone or in combination, teach or render obvious the following elements of amended independent Claim 1: for each acceptable bid received from one of the bidders, (iii) if the at least one data processing device determines that said bid is unique, determine whether said bid is a lowest unique bid; (iv) if the at least one data processing device determines that said bid is the lowest unique bid: (A) cause a second bid acceptance message to be sent by SMS to the communication device of said bidder, said second bid acceptance message including a notification that said bid is the lowest unique bid; and (B) charge said bidder for sending said second bid acceptance message.

As noted above, the Office Action acknowledged that *Admon* does not disclose

or suggest sending any bid acceptance messages. Further, *Admon*'s system does not determine whether a bid is the lowest unique bid until the auction is complete. Additionally, it is unclear whether *Admon* requires payment of the participation fee once or for each bid. *Mendiola* does not remedy these deficiencies of *Admon*. First, *Mendiola*'s auction system does not determine whether a bid is a lowest unique bid. Rather, *Mendiola*'s auction system determines whether a bid is higher than the current highest bid at the time the bid is received; the fact that a bid is the lowest unique bid is irrelevant to *Mendiola*'s auction. Second, and necessarily, *Mendiola* does not, if a bid is the lowest unique bid, send a bid acceptance message including a notification indicating that the bid is the lowest unique bid. Rather, *Mendiola*'s bid acceptance messages simply include a notification indicating whether a bid was accepted. Third, *Mendiola* does not send one of a plurality of bid acceptance messages for each acceptable bid. Rather, as explained in detail above, *Mendiola* only sends bid acceptance messages in association with bids placed after an initial bid (i.e., *Mendiola* does not send a bid acceptance message with respect to a bidder's initial bid). Finally, *Mendiola*'s auction system does not charge bidders for each placed bid.

Third, neither *Admon* nor *Mendiola*, alone or in combination, teach or render obvious the following elements of amended independent Claim 1: for each acceptable bid received from one of the bidders, (v) if the at least one data processing device determines that said bid is unique but not the lowest unique bid: (A) cause a third bid acceptance message to be sent by SMS to the communication device of said bidder, said third bid acceptance message including a notification that said bid is unique but not the lowest unique bid; and (B) charge said bidder for sending said third bid acceptance message.

As noted above, the Office Action acknowledged that *Admon* does not disclose or suggest sending any bid acceptance messages. Additionally, it is unclear whether *Admon* requires payment of the participation fee once or for each bid. *Mendiola* does not remedy these deficiencies of *Admon*. First, *Mendiola* does not, if a bid is unique but not the lowest unique bid, send a bid acceptance message including a notification indicating that the bid is unique but not the lowest unique bid. Rather, *Mendiola*'s bid

acceptance messages simply include a notification indicating whether a bid was accepted. Second, *Mendiola* does not send one of a plurality of bid acceptance messages for each acceptable bid. Rather, as explained in detail above, *Mendiola* only sends bid acceptance messages in association with bids placed after an initial bid (i.e., *Mendiola* does not send a bid acceptance message with respect to a bidder's initial bid). Finally, *Mendiola*'s auction system does not charge bidders for each placed bid.

For at least these reasons, Applicant respectfully submits that amended independent Claim 1 is patentably distinguished over *Admon* in view of *Mendiola* and in condition for allowance. Claims 2 to 4, 6, 9, 10, and 29, which depend from amended independent Claim 1, are patentably distinguished over *Admon* in view of *Mendiola* and in condition for allowance for the reasons explained above with respect to independent Claim 1 and because of additional features recited in these claims. Claim 8 has been canceled; therefore, Applicant respectfully submits that its rejection is moot.

**2. The rejection of Claims 5 and 7 under 35 U.S.C. § 103(a) as being unpatentable over *Admon* in view of *Mendiola* and *Herzog*.**

Claims 5 and 7 have been canceled; therefore, Applicant respectfully submits that their rejections are moot.

**3. The rejection of Claims 12, 13, 15, 16, 18 to 26, and 30 under 35 U.S.C. § 103(a) as being unpatentable over *Admon* in view of *Mendiola* and *Link77*.**

*Admon* and *Mendiola* are described above. *Link77* is a press release introducing a "reverse charge SMS billing service for ringtones and logos." *Link77*, Abstract. *Link77* does not disclose at least the following elements of amended independent Claim 1: (c) for each acceptable bid received from one of the bidders: (i) determine whether said bid is unique; (ii) if the at least one data processing device determines that said bid is not unique: (A) cause a first bid acceptance message to be sent by SMS to a communication device of said bidder, said first bid acceptance message including a notification that said bid is not unique; and (B) charge said bidder for sending said first bid acceptance message; (iii) if the at least one data processing device determines that said bid is unique, determine whether said bid is a lowest unique bid; (iv) if the at least

one data processing device determines that said bid is the lowest unique bid: (A) cause a second bid acceptance message to be sent by SMS to the communication device of said bidder, said second bid acceptance message including a notification that said bid is the lowest unique bid; and (B) charge said bidder for sending said second bid acceptance message; and (v) if the at least one data processing device determines that said bid is unique but not the lowest unique bid: (A) cause a third bid acceptance message to be sent by SMS to the communication device of said bidder, said third bid acceptance message including a notification that said bid is unique but not the lowest unique bid; and (B) charge said bidder for sending said third bid acceptance message.

Thus, regardless of *Link77*'s disclosure, *Link77* does not remedy the above-explained deficiencies of *Admon* and *Mendiola* with respect to amended independent Claim 1. Amended independent Claim 26, includes certain elements similar to those included in amended independent Claim 1. For reasons similar to those explained above with respect to amended independent Claim 1, amended independent Claim 26 is patentably distinguished over *Admon* in view of *Mendiola* and *Link77* and in condition for allowance.

Claims 12, 13, 15, 16, 18 to 25, and 30, which depend from amended independent Claim 26, are patentably distinguished over *Admon* in view of *Mendiola* and *Link77* and in condition for allowance for the reasons explained above with respect to amended independent Claim 26 and because of additional features recited in these claims.

**4. The rejection of Claim 14 under 35 U.S.C. § 103(a) as being unpatentable over *Admon* in view of *Mendiola* and *Link77* and further in view of *Abeshouse*.**

*Admon*, *Mendiola*, and *Link77* are described above. *Abeshouse* discloses "[a] method of synchronizing a closing of a network auction." *Abeshouse*, Abstract. Page 21 of the Office Action asserts that *Abeshouse* discloses "wherein a bids [sic] is not associated with a live session for the auction, then using an auction identifier data item to determine whether the bid is for an auction and if it is then loading message data into a message object." *Abeshouse* does not disclose at least the following elements of

amended independent Claim 1: (c) for each acceptable bid received from one of the bidders: (i) determine whether said bid is unique; (ii) if the at least one data processing device determines that said bid is not unique: (A) cause a first bid acceptance message to be sent by SMS to a communication device of said bidder, said first bid acceptance message including a notification that said bid is not unique; and (B) charge said bidder for sending said first bid acceptance message; (iii) if the at least one data processing device determines that said bid is unique, determine whether said bid is a lowest unique bid; (iv) if the at least one data processing device determines that said bid is the lowest unique bid: (A) cause a second bid acceptance message to be sent by SMS to the communication device of said bidder, said second bid acceptance message including a notification that said bid is the lowest unique bid; and (B) charge said bidder for sending said second bid acceptance message; and (v) if the at least one data processing device determines that said bid is unique but not the lowest unique bid: (A) cause a third bid acceptance message to be sent by SMS to the communication device of said bidder, said third bid acceptance message including a notification that said bid is unique but not the lowest unique bid; and (B) charge said bidder for sending said third bid acceptance message.

Thus, regardless of *Abeshouse's* disclosure, *Abeshouse* nevertheless does not remedy the above-referenced deficiencies of *Admon*, *Mendiola*, and *Link77* with respect to amended independent Claim 26. Claim 14 depends from amended independent Claim 26. As such, for at least the reasons explained above with respect to amended independent Claim 26 and because of additional features recited in this claim, Applicant respectfully submits that Claim 14 is patentably distinguished over *Admon* in view of *Mendiola*, *Link77*, and *Abeshouse* and in condition for allowance.

**5. The rejection of Claim 17 under 35 U.S.C. § 103(a) as being unpatentable over *Admon* in view of *Mendiola* and *Link77* and further in view of *Hong Kong's Tender*.**

*Admon*, *Mendiola*, and *Link77* are described above. Page 22 of the Office Action asserts that *Hong Kong Tender* discloses "determining whether the bid exceeds a maximum number of bids for the bidder." *Hong Kong Tender* does not disclose at least



the following elements of amended independent Claim 1: (c) for each acceptable bid received from one of the bidders: (i) determine whether said bid is unique; (ii) if the at least one data processing device determines that said bid is not unique: (A) cause a first bid acceptance message to be sent by SMS to a communication device of said bidder, said first bid acceptance message including a notification that said bid is not unique; and (B) charge said bidder for sending said first bid acceptance message; (iii) if the at least one data processing device determines that said bid is unique, determine whether said bid is a lowest unique bid; (iv) if the at least one data processing device determines that said bid is the lowest unique bid: (A) cause a second bid acceptance message to be sent by SMS to the communication device of said bidder, said second bid acceptance message including a notification that said bid is the lowest unique bid; and (B) charge said bidder for sending said second bid acceptance message; and (v) if the at least one data processing device determines that said bid is unique but not the lowest unique bid: (A) cause a third bid acceptance message to be sent by SMS to the communication device of said bidder, said third bid acceptance message including a notification that said bid is unique but not the lowest unique bid; and

Regardless of *Hong Kong Tender's* disclosure, *Hong Kong Tender* nevertheless does not remedy the above-referenced deficiencies of *Admon*, *Mendiola*, and *Link77* with respect to amended independent Claim 26. Claim 17 depends from amended independent Claim 26. As such, for at least the reasons explained above with respect to amended independent Claim 26 and because of additional features recited in this claim, Applicant respectfully submits that Claim 17 is patentably distinguished over *Admon* in view of *Mendiola*, *Link77*, and *Hong Kong Tender* and in condition for allowance.

## **6. New Claims 31 to 38.**

New Claims 31 to 37 each directly or indirectly depend from amended independent Claim 1. New independent Claim 38 includes certain elements of amended independent Claim 1 and Claims 32, 34, and 36. For at least the reasons explained above with respect to amended independent Claim 1, Applicant respectfully submits that new Claims 31 to 38 are patentably distinguished over *Admon* in view of

*Mendiola* and in condition for allowance.

Claims 32 to 38 are directed to sending one of a plurality of status change notification messages to a bidder of a bid in response to a determination that: (1) the bidder's bid changes from being the lowest unique bid to being unique but not the lowest unique bid; (2) the bidder's bid changes from being the lowest unique bid to not being a unique bid; and (3) the bidder's bid changes from being unique but not the lowest unique bid to not being unique. As explained above, *Admon* does not disclose or suggest sending any messages to bidders, including status change messages. *Mendiola*'s status change message is sent to a bidder only if the bidder's bid is beaten by a higher bid. In other words, *Mendiola* does not disclose the subject matter recited in Claims 32 to 38. Further, this subject matter is immaterial to *Mendiola*'s auction system. Because *Mendiola* practices a standard auction in which a bid's status as unique, as the lowest unique bid, or as unique but not the lowest unique bid is entirely irrelevant. For at least these additional reasons, Applicant respectfully submits that Claims 32 to 38 are patentably distinguished over *Admon* in view of *Mendiola* and in condition for allowance.

An earnest endeavor has been made to place this application in condition for formal allowance and in the absence of more pertinent art such action is courteously solicited. If the Examiner has any questions regarding this Response, Applicant respectfully requests that the Examiner contact the undersigned.

Respectfully submitted,

K&L Gates, LLP

By: 

Adam H. Masia  
Reg. No. 35,602  
Customer No. 29159  
(312) 807-4284

Dated: June 27, 2011